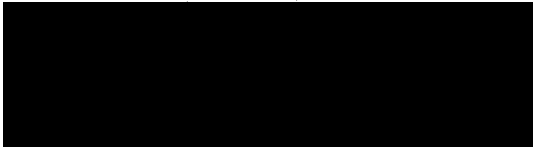




U.S. Citizenship
and Immigration
Services

H-3



FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:

JUL 22 2004

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act; 8 U.S.C. § 1182(e).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The waiver application was denied by the Director, California Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Mexico. The record reflects that the applicant entered the United States unlawfully on an unknown date. The record contains no evidence to indicate that the applicant acquired J1 nonimmigrant exchange visitor status or that he was at any time admitted into the United States pursuant to a J1 nonimmigrant visa. The applicant filed a Form I-612, Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1182(e) (I-612 application) in June 2003. Pursuant to the I-612 application, the applicant believes that he is subject to the two-year foreign residence requirement under section 212(e) of the Act, and he seeks a waiver of the two-year foreign residence requirement.

The director determined that in order to qualify for waiver consideration under section 212(e) of the Act, an applicant must have acquired J1 nonimmigrant visa status or been admitted into the United States as a J1 nonimmigrant. The director determined that the applicant had failed to demonstrate that he held J1 nonimmigrant visa status at any time, and that he was therefore statutorily ineligible to apply for or to receive a waiver of the J1 foreign residence requirement. The application was denied accordingly.

On appeal, the applicant asserts that his wife and children will suffer financial and emotional hardship if he is required to leave the United States, and that he believes he is eligible for a waiver under section 212(e) of the Act.

Section 101(a)(15)(J) of the Act, 8 U.S.C. § 1101(a)(15)(J) states:

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens

(J) an alien having a residence in a foreign country which he has no intention of abandoning who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Director of the United States Information Agency, for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training and who, if he is coming to the United States to participate in a program under which he will receive graduate medical education or training, also meets the requirements of section 212(j), and the alien spouse and minor children of any such alien if accompanying him or following to join him.

Section 212(e) of the Act states in pertinent part that:

(e) No person admitted under section 101(a)(15)(J) or acquiring such status after admission

(i) whose participation in the program for which he came to the United States was

financed in whole or in part, directly or indirectly, by an agency of the Government of the United States or by the government of the country of his nationality or his last residence,

(ii) who at the time of admission or acquisition of status under section 101(a)(15)(J) was a national or resident of a country which the Director of the United States Information Agency pursuant to regulations prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged, or

(iii) who came to the United States or acquired such status in order to receive graduate medical education or training, shall be eligible to apply for an immigrant visa, or for permanent residence, or for a nonimmigrant visa under section 101(a)(15)(H) or section 101(a)(15)(L) until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of a least two years following departure from the United States: Provided, That upon the favorable recommendation of the Director, pursuant to the request of an interested United States Government agency (or, in the case of an alien described in clause (iii), pursuant to the request of a State Department of Public Health, or its equivalent), or of the Commissioner of Immigration and Naturalization [now, Citizenship and Immigration Services, CIS] after he has determined that departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or a lawfully resident alien), or that the alien cannot return to the country of his nationality or last residence because he would be subject to persecution on account of race, religion, or political opinion, the Attorney General [now the Secretary, Homeland Security, "Secretary"] may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General [Secretary] to be in the public interest except that in the case of a waiver requested by a State Department of Public Health, or its equivalent, or in the case of a waiver requested by an interested United States government agency on behalf of an alien described in clause (iii), the waiver shall be subject to the requirements of section 214(l): And provided further, That, except in the case of an alien described in clause (iii), the Attorney General [Secretary] may, upon the favorable recommendation of the Director, waive such two-year foreign residence requirement in any case in which the foreign country of the alien's nationality or last residence has furnished the Director a statement in writing that it has no objection to such waiver in the case of such alien.

The record reflects that the applicant entered the United States illegally on an unknown date and that he did not, at any time, acquire status under section 101(a)(15)(J) of the Act, or obtain admission into the United States pursuant to a J1 nonimmigrant visa issued under section 101(a)(15)(J) of the Act. The AAO notes that a waiver under section 212(e) of the Act is available exclusively in cases where an applicant has acquired or been admitted into the United States with a J1 nonimmigrant visa. Accordingly, the AAO finds that the applicant is statutorily ineligible to apply for or to be granted a waiver under section 212(e) of the Act.

Moreover, because the applicant is statutorily ineligible for a section 212(e) waiver, the AAO finds it unnecessary to address the applicant's hardship claim.

The burden of proving eligibility for relief under section 212(e) of the Act rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant in the present case has not met his burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.